

ENGLISH HIGH COURT GRANTS PERMISSION FOR ENFORCEMENT PROCEEDINGS TO BE SERVED ON IRAN

Ben-Rafael v Iran, Unreported, 8 October 2015

Introduction

In a judgment given on 8 October 2015 in *Ben-Rafael v Iran* (unreported), the English High Court (Whipple J) gave permission for personal injury claims to be served out of the jurisdiction upon the Islamic Republic of Iran following a judgment by the US courts granting the claimants damages in respect of personal injuries suffered as a result of acts of terrorism.

Background

In 1992, the claimants were injured as a result of a terrorist attack against the Israeli Embassy in Argentina.

In 2010, the claimants obtained judgment in the US courts against Iran granting them significant damages. The US court made a finding that Iran was liable to pay damages on the basis that Iran had been involved in the provision of funding for the 1992 attack.

As a result of internationally co-ordinated economic sanctions, there were substantial commercial assets belonging to Iran within the United Kingdom. The claimants therefore sought to enforce the US judgment against Iranian assets in the United Kingdom through the English courts. The claimants applied to the English courts for permission to serve the claims on Iran out of the jurisdiction.

Legal Issues

The claimants had to demonstrate to the English courts that the requirements of Section 31 of the Civil Jurisdiction and Judgments Act 1982 (“the 1982 Act”) were satisfied.

Under Section 31(1)(a) of the 1982 Act, a judgment from an overseas court against a State other than the United Kingdom shall only be recognised and enforced if it could be shown that the judgment would be so recognised and enforced if it had not been given against a State.

Under Section 31(1)(b) of the 1982 Act, an overseas judgment against a State shall only be recognised and enforced if it could be shown that the proceedings against the State fell within the exceptions to state immunity contained in Sections 2-11 of the State Immunity Act 1978 (“the 1978 Act”).

Section 5 of the 1978 Act provides for an exception to state immunity in respect of personal injury cases.

Decision

Whipple J granted the claimants permission to serve Iran out of the jurisdiction.

Whipple J held that Section 5 of the 1978 Act was satisfied where the proceedings related to death or personal injury or damage to property caused by an act or omission attributable to the defendant State. The judgment from the US courts had already clearly found that this action concerned death and personal injuries arising out of a conspiracy on US territory. Indeed, the English courts had previously made a decision in a similar case (*Heiser v Iran* [2012] EWHC 2938 (QB)) that Iran did not benefit from state immunity in respect of claims for personal injuries caused by acts of terrorism emanating from a conspiracy in the US. In recognising these facts, there was a good arguable case that Iran did not benefit from state immunity, and therefore the requirements of Section 31(1)(b) of the 1982 Act were satisfied.

Furthermore, the claimants could show an arguable case that Iran had a presence in the United Kingdom due to the Iranian assets within the United Kingdom as a result of the economic sanctions regime and that a judgment would be enforceable against those assets under Section 31(1)(a) of the 1982 Act.

Concluding Remarks

The claimants' application was made without notice. Accordingly, Iran is entitled to apply for the order to be set aside.

The judgment affirms that foreign States are not immune in England from proceedings in respect of personal injuries caused by the acts or omissions of agents of the State.

25 October 2015